

On appeal, the appellant argues that the reason that she was given for her bypass, that the other candidates scored higher on the interviews, is not specific enough. The appellant presents that she attended an interview for each office while on maternity leave in September 2018. She indicates that she was asked the same three or four questions at each interview although she was informed that there could be a potential for seven or eight questions.² The appellant claims that other candidates were asked more and varied questions than her during their interviews. Additionally, although her questions did not vary, she provided knowledgeable answers to each interview question. However, if she had been given the opportunity to answer additional questions, she would have been better able to highlight her “supervisory”³ tasks that she currently performs in the Gloucester office, such as reviewing and approving associates’ work and guiding a novice counselor to help her manage her caseload while the office supervisor was on leave, while still managing her own caseload. The appellant states that if the reason that she was not offered a position is based solely on her interviews, she believes she was not provided an equal opportunity to interview for a position. She presents that she has received positive reviews on all her performance evaluations for the past seven years while she served as a Vocational Rehabilitation Counselor. The appellant states that there were candidates that were ranked as low as 12 and 14 on the list who were offered positions.

In response, the appointing authority indicates that at the interviews for positions at Gloucester, Burlington and Camden County, all candidates were asked the same questions for each location. Further, it presents that every candidate who interviewed for a position with these counties and who were appointed for a position in these or other counties, all had higher interview scores than the appellant.⁴ Additionally, the appointing authority states that the Office of Diversity and the Office of Human Resources approved the questions utilized in the interview process and the panel composition prior to the interviews.

In reply, the appellant believes that her interview score of 15 for Gloucester and Burlington County is incredibly low based on the quality of responses that she gave. She asserts that based on her Civil Service test, her experience, and her

² The appellant indicates that the interviews for positions in Gloucester and Camden County were conducted by the Office Managers for the Gloucester, Camden and Burlington offices and the interview for a position in Camden County was conducted by the Office Managers for Camden and Burlington offices and the Regional Chief.

³ The appellant’s permanent title, Vocational Rehabilitation Counselor 2, is non-supervisory and, therefore, the appellant is more appropriately describing lead-worker duties.

⁴ The appointing authority indicates that candidates who interviewed for a position in Burlington County and who were appointed in Burlington County or other locations received interview scores ranging from 18 to 26 while the appellant received a score of 15. Candidates who interviewed for a position in Gloucester County and who were appointed in Gloucester County or other locations received interview scores ranging from 23 to 27 while the appellant received a score of 15. The candidates who interviewed for a position in Camden County and were appointed in Camden County received interview scores of 27 while the appellant received a score of 17.

performance reviews, she is aware of what the job entails and that her score is not reflective of this. The appellant requests more information concerning the scoring process and how she received a lower score than the other candidates. She also requests a copy of the interview questions and her responses so that she can better determine how she could have answered differently. The appellant reiterates her claim that another candidate informed her that they received more than three or four questions during their interview process and that if she had been given the opportunity to answer additional questions she would have been better able to highlight the supervisory duties that she currently performs. Additionally, she requests that the appointing authority expand on what qualifications or skills that are needed for the subject title that she does not possess. She complains that the appointing authority has not responded to her requests for this information.

CONCLUSION

N.J.S.A. 11A:4-8, *N.J.S.A.* 11A:5-7 and *N.J.A.C.* 4A:4-4.8(a)3i allow an appointing authority to select any of the top three interested eligibles on a promotional list provided no veteran heads the list. Additionally, *N.J.A.C.* 4A:2-1.4(c) provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to bypass the appellant from an eligible list was improper.

In cases of this nature, where dual motives are asserted for an employer's actions, an analysis of the competing justifications to ascertain the actual reason underlying the action is warranted. See *Jamison v. Rockaway Township Board of Education*, 242 *N.J. Super.* 436 (App. Div. 1990). In *Jamison*, *supra* at 445, the Court outlined the burden of proof necessary to establish discriminatory and/or retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish discrimination or retaliation by a preponderance of the evidence. Once a *prima facie* showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-discriminatory or non-retaliatory reason for the decision.

If the employer produces evidence to meet its burden, the complainant may still prevail if he or she shows that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the employee sustain this burden, he or she has established a presumption of discriminatory or retaliatory intent. The burden of proof then shifts to the employer to prove that the adverse action would have taken place regardless of the motive. In a case such as this, where the adverse action is failure to promote, the employer has the burden of showing, by preponderating evidence, that other candidates had better qualifications than the complainant.

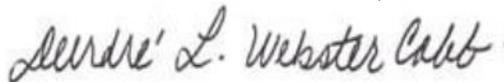
In the instant matter, it was within the appointing authority's discretion to select any of the top three interested eligibles for each appointment and, therefore, the appellant and those that were appointed on the subject certifications were reachable for potential appointment. Nevertheless, the appellant alleges that based on her experience, performance evaluations, and her interview responses, she should have been appointed to a position in the subject title in either Gloucester, Burlington, or Camden County. However, even if the appellant was more qualified than the appointed candidates, as she has not alleged or presented any evidence that her bypass was based on an unlawful motive, the appointing authority's actions were within its discretion under the "Rule of Three." See *In the Matter of Michael Cervino* (MSB, decided June 9, 2004). Further, the appointing authority has presented a legitimate business reason for her bypass. Specifically, she scored lower on the interviews than those who were appointed. Additionally, contrary to the appellant's claim, the appointing authority indicates that for each interview, she received the same questions as the other candidates. Further, it presents that the questions and the interview panels were approved by the Office of Diversity and the Office of Human Resources. It is noted that the use of an interview as the selection method was within the appointing authority's discretion. See *In the Matter of Daniel Dunn* (CSC, decided August 15, 2012). Similarly, the number of questions, who was on the panel, and whether to vary the interview questions at the different locations were also decisions within its discretion. In other words, there is no evidence that the appellant was treated any differently than any other candidate or prejudiced in any way during the interview process. With respect to the appellant's request for greater insight on the appointing authority's evaluation process, the appointing authority is only obligated to provide a legitimate business reason for her bypass on appeal and it is not required to disclose any more information about its evaluation of the candidates.

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12th DAY OF JUNE, 2019



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